

By: Klick

H.B. No. 3564

A BILL TO BE ENTITLED

AN ACT

relating to the office of the state long-term care ombudsman;
affecting the prosecution of a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 101A, Human Resources Code, is amended to read as follows:

SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

Sec. 101A.251. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission [~~"Elderly resident" means a resident of a long-term care facility who is 60 years of age or older~~].

(1-a) "Local ombudsman entity" means a distinct unit or entity, consisting of representatives, designated by the state long-term care ombudsman to carry out the ombudsman program in a service area of the state.

(2) "Long-term care facility" means a facility that [~~serves persons who are 60 years of age or older and that~~] is licensed or regulated or that is required to be licensed or regulated by the commission [~~department~~] under Chapter 242 or 247, Health and Safety Code.

(3) "Office" means the office of the state long-term care ombudsman, consisting of the state long-term care ombudsman and representatives who are employed by the commission.

(3-a) "Ombudsman program" means the program through

1 which the functions and duties of the office are carried out,
2 consisting of the office and all representatives.

3 (4) "Representative" means an employee or volunteer
4 specifically designated by the office as a representative of the
5 office.

6 (4-a) "Resident" means a resident of a long-term care
7 facility.

8 (5) "State long-term care ombudsman" means the chief
9 administrator of the office.

10 Sec. 101A.252. OPERATION OF OFFICE. (a) The office
11 ~~[department]~~ shall operate and is subject to the commission's
12 oversight in accordance with federal and state statute ~~[the office~~
13 ~~of the state long-term care ombudsman]~~.

14 (b) The commission ~~[department]~~ may operate the office
15 directly or by contract or memorandum of agreement with a public
16 agency or other appropriate private nonprofit organization. The
17 commission, agency, or organization may not implement a policy that
18 prohibits the office from performing its duties under this
19 subchapter. The commission ~~[department]~~ may not use an agency or
20 organization that ~~[is]~~:

21 (1) is responsible for licensing or certifying
22 long-term care services; ~~[or]~~

23 (2) is an association of long-term care facilities or
24 of any other residential facility that serves persons with
25 disabilities or who are 60 years of age or older, or that is an
26 affiliate of such an association; or

27 (3) has an ownership, operational, or investment

1 interest in a long-term care facility.

2 (c) The commission [~~department~~] shall consider the views of
3 residents [~~elderly persons~~], provider organizations, advocacy
4 groups, and area agencies on aging in planning and operating the
5 office.

6 (d) The commission [~~department~~] shall ensure that a person
7 involved in designating the state long-term care ombudsman or in
8 designating a [~~an employee or~~] representative [~~of the office~~] does
9 not have a conflict of interest.

10 Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman
11 program shall operate in cooperation with any regulatory agency
12 funded and mandated by federal [~~the Older Americans Act of 1965 (42~~
13 ~~U.S.C. Section 3001 et seq.)~~] and state statute.

14 Sec. 101A.254. POWERS AND DUTIES OF STATE LONG-TERM CARE
15 OMBUDSMAN AND OFFICE. (a) The [~~state ombudsman and the~~] office has
16 [~~have~~] the powers and duties authorized and required by state and
17 federal law.

18 (b) The office may use appropriate administrative, legal,
19 and other remedies to assist [~~elderly~~] residents as provided by
20 commission [~~department~~] rules.

21 (c) The office acts independently of the commission in the
22 performance of its powers and duties under this subchapter.

23 (d) The state long-term care ombudsman has the authority to
24 designate a local ombudsman entity or representative and to suspend
25 or revoke that designation.

26 Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit
27 volunteers and citizen organizations to participate in the

1 ombudsman program. A paid staff member of an area agency on aging
2 network or a nonprofit social service agency may be an ombudsman.
3 An ombudsman is a representative [~~of the office~~].

4 (b) The office shall provide training to ombudsmen as
5 required by this subchapter and federal law.

6 (c) The office shall coordinate ombudsman services with the
7 protection and advocacy systems that exist for persons with
8 developmental disabilities or mental illness.

9 (d) The office shall coordinate ombudsman services with
10 state and local law enforcement agencies and courts of competent
11 jurisdiction. The office is not authorized to compel those law
12 enforcement agencies or courts to coordinate ombudsman services or
13 other activities with the office.

14 Sec. 101A.256. LEGAL COUNSEL [~~ASSISTANCE~~]. The commission
15 [~~department~~] shall ensure that the office receives adequate legal
16 advice and representation without conflict of interest as defined
17 by the Texas Disciplinary Rules of Professional Conduct. The
18 attorney general shall represent the state long-term care ombudsman
19 and [~~or~~] a representative if a suit or other legal action is brought
20 or threatened to be brought against that person in connection with
21 the person's performance of the official duties of the ombudsman
22 program [~~office~~].

23 Sec. 101A.257. INVESTIGATIONS. (a) The office shall have
24 access to [~~elderly~~] residents and shall, in accordance with
25 commission rules, investigate and resolve complaints made by or on
26 behalf of [~~elderly~~] residents.

27 (b) The state long-term care ombudsman [~~department~~] shall

1 ensure that each ombudsman designated under Section 101A.255 who
2 investigates complaints has received proper training and has been
3 approved by the office as qualified to investigate complaints.

4 (c) The office shall investigate a grievance made against a
5 representative in accordance with commission rules and inform the
6 person who made the grievance of the outcome of the investigation
7 when the investigation is concluded.

8 (d) A long-term care facility shall cooperate with an
9 investigation conducted by the state long-term care ombudsman or a
10 representative, including an ombudsman designated under Section
11 101A.255.

12 Sec. 101A.258. ACCESS TO RECORDS AND CONFIDENTIALITY. (a)
13 The state long-term care ombudsman and representatives [~~or the~~
14 ~~state ombudsman's designee, specifically identified by the~~
15 ~~commissioner,~~] shall have access to patient care records of
16 [~~elderly~~] residents as provided by commission rules. Except as
17 provided by Subsection (b), all [~~of long-term care facilities as~~
18 ~~provided by Subsection (a-1).~~ The executive commissioner by rule
19 ~~shall establish procedures for obtaining access to the records.~~
20 ~~All~~] records and information created or obtained by [~~to which~~] the
21 state long-term care ombudsman or a representative [~~the state~~
22 ~~ombudsman's designee obtains access~~] remain confidential.

23 (a-1) The state long-term care ombudsman and
24 representatives [~~or the state ombudsman's designee, specifically~~
25 ~~identified by the commissioner,~~] shall have access to patient care
26 records of a resident [~~elderly residents of long-term care~~
27 ~~facilities~~] if:

1 (1) the resident or the resident's legal
2 representative consents to the access;

3 (2) the resident is unable to consent to the access and
4 the resident has no legal representative; or

5 (3) access to the records is necessary to investigate
6 a complaint and:

7 (A) a legal representative [~~guardian~~] of the
8 resident refuses to consent to the access;

9 (B) the state long-term care ombudsman or
10 representative [~~the state ombudsman's designee~~] has reasonable
11 cause to believe that the legal representative of the resident
12 [~~guardian~~] is not acting in the best interests of the resident; and

13 (C) the state long-term care ombudsman approves
14 the access.

15 (b) The office shall ensure that the identity of a
16 complainant or any [~~facility~~] resident may be disclosed only with
17 the [~~written~~] consent of the person or the person's legal
18 representative or on court order.

19 (c) Files, records, and other information maintained as
20 part of the ombudsman program may be disclosed only at the
21 discretion of the state long-term care ombudsman. [~~The information~~
22 ~~in files maintained by the office may be disclosed only by the~~
23 ~~ombudsman who has authority over the disposition of the files.~~]

24 Sec. 101A.259. REPORTING SYSTEM. The office shall maintain
25 a statewide ombudsman uniform reporting system to collect and
26 analyze information relating to complaints and conditions in
27 long-term care facilities as long as such system does not duplicate

1 other state reporting systems. The office shall provide the
2 information to the commission in accordance with federal law
3 [~~department and the Health and Human Services Commission~~].

4 Sec. 101A.260. ANALYSIS OF LAWS. (a) The office shall
5 analyze and monitor the development and implementation of federal,
6 state, and local laws, rules, regulations, and policies relating to
7 long-term care facilities and services and shall recommend any
8 changes the office considers necessary.

9 (b) To the extent necessary to perform any duties under this
10 subchapter, Section 556.006(a), Government Code, and Section
11 391.0116, Local Government Code, do not apply to the state
12 long-term care ombudsman or a representative.

13 Sec. 101A.261. PUBLIC INFORMATION. The office shall
14 provide information and make recommendations to public agencies,
15 legislators, and other persons about [~~others that relates to~~] the
16 problems and concerns of [~~elderly~~] residents.

17 Sec. 101A.262. [~~ANNUAL~~] REPORT. (a) The office shall
18 prepare a [~~an annual~~] report that contains:

19 (1) information and findings relating to the problems
20 and concerns [~~complaints~~] of [~~elderly~~] residents; and

21 (2) policy, regulatory, and legislative
22 recommendations to solve the problems, resolve the concerns
23 [~~complaints~~], and improve the quality of the [~~elderly~~] residents'
24 care and lives.

25 (b) The report must be submitted to the governor and the
26 presiding officer of each house of the legislature not later than
27 November 1 of each even-numbered year.

1 Sec. 101A.263. LIMITATION OF LIABILITY. The state
2 long-term care [~~An~~] ombudsman or a representative is not liable for
3 civil damages or subject to criminal prosecution for performing
4 official duties unless the state long-term care ombudsman or
5 representative acts in bad faith or with a malicious purpose.

6 Sec. 101A.264. CRIMINAL PENALTY. (a) A person commits an
7 offense if the person:

8 (1) by act or omission, wilfully [~~intentionally~~]
9 interferes or attempts to interfere with the state long-term care
10 [~~an~~] ombudsman or a representative attempting to perform official
11 duties; or

12 (2) commits or attempts to commit an act of
13 retaliation or reprisal against any resident or employee of a
14 long-term care facility for filing a complaint or providing
15 information to the state long-term care [~~an~~] ombudsman or a
16 representative.

17 (b) An offense under this section is a Class B misdemeanor.

18 (c) The commission [~~department~~] shall ensure [~~assure~~] that
19 criminal sanctions will be initiated only after all administrative
20 procedures are exhausted.

21 SECTION 2. Section 101A.264, Human Resources Code, as
22 amended by this Act, applies only to an offense committed on or
23 after the effective date of this Act. An offense committed before
24 the effective date of this Act is governed by the law in effect on
25 the date the offense was committed, and the former law is continued
26 in effect for that purpose. For purposes of this section, an
27 offense was committed before the effective date of this Act if any

1 element of the offense occurred before that date.

2 SECTION 3. This Act takes effect September 1, 2017.